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UNCLAS SECTION 01 OF 04 PRETORIA 000628

DEPT FOR OES/PCI, OES/ENV, AND AF/S
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TAGS: [SENV](#) [TSPL](#) [TBIO](#) [EAGR](#) [ENRG](#) [ECON](#) [AMGT](#) [APER](#)
SUBJECT: EMBASSY SCIENCE FELLOW PROGRAM 2009 SOUTH AFRICA

Ref: STATE 10843

PRETORIA 00000628 001.2 OF 004

¶1. (U) Post submits two proposals for Science Fellows. Proposal One requests a Science Fellow for May 2009. Proposal Two requests three dimensional modeling of the world's largest repository of the platinum-group elements in the Bushveld complex.

Proposal One: Administrative and Civil Penalties for Environmental Violations

A) Topic: Administrative and civil penalties for environmental violations
B) Hosts: Conference Organizer, Environmental Law Association of South Africa, Chair: Richard Summers, wsummers@law.co.za, Secretary: Anel du Plessis, Anel.DuPlessis@nwu.ac.za.

-- Conference Workshop Co-Host, Melissa Fourie, consultant in environmental law, policy and strategy and former Director: Enforcement at the South African Department of Environmental Affairs and Tourism, mfourie@fastmail.fm, (responsible for this proposal)
C) Timeframe and length of fellowship: one month during May 2009 (only three days required in host country)
D) Additional skills needed: English language and presentation skills.
E) State whether security clearance is required: No.

Proposal Description

¶F. Background information validating the proposal: In December 2008, the United States Environmental Protection Agency (EPA), supported by the US Department of Justice (DoJ), levied a fine of more than \$6 million on multinational oil company Exxon Mobil because Exxon violated an agreement with the EPA to decrease sulphur emissions at four of its refineries. Exxon not only paid the \$6 million fine, but also came into compliance with EPA standards for sulphur emissions. There was no drawn-out prosecution of Exxon Mobil in the criminal courts; EPA did not have to prove a criminal offence beyond reasonable doubt. This was an administrative penalty levied by the EPA based on evidence of wrongdoing proved on a "burden of persuasion" or "preponderance of the evidence", which translates into the South African legal context as a "balance of probabilities", the standard of proof in civil matters.

F.1. South African environmental legislation does not provide for the levying of administrative penalties for contraventions, whether the contravention constitutes a criminal offence or not. This means that the only way to obtain a punitive monetary order, i.e., orders to remediate environmental damage, against a violator, is to prosecute the offender in a criminal court and to have evidence

supporting a verdict beyond reasonable doubt. Should a conviction be achieved, the magistrate - who currently receives no standard training in environmental law and the impact of environmental crime - determines the appropriate fine.

F.1.a. Conducting a full criminal prosecution for each and every contravention of environmental legislation or permit places an undue burden on the criminal justice system, already overloaded with the demands of a high violent crime rate in South Africa. It also causes a low prosecution rate for environmental offences, not only because it is difficult to procure a conviction and a meaningful sentence, but also because it discourages authorities from prosecution in the first place.

F.1.b. Events and collaborations supporting the proposal: Melissa Fourie - former South African Department of Environmental Affairs QFourie - former South African Department of Environmental Affairs and Tourism (DEAT) Director: Enforcement, now a consultant in environmental law, policy and strategy, visited the Washington D.C., Philadelphia and Boston offices of the EPA in August 2008. (This visit was facilitated by previous collaboration between DEAT and the EPA between 2005 and 2008.) Melissa met with a number of EPA officials during her visits to gain insight into the EPA's administrative and civil penalty system. Their names are available for transmittal, if needed.

F.1.c. On the basis of the information gained, Melissa submitted an abstract for a paper to the Environmental Law Association of South Africa (ELA), to be presented as part of a specialized workshop on a proposed administrative and civil penalties system for environmental violations in South Africa. The national workshop will be held May 29-30, 2009 near Johannesburg. The abstract, entitled "How civil and administrative penalties can change the face of environmental compliance in South Africa", is available for transmittal, if desired. The papers (and the workshop) argue that an administrative and civil penalty system for environmental violations, such as the

PRETORIA 00000628 002.2 OF 004

system implemented by the EPA, is an effective and feasible way of addressing the challenges faced by environmental regulators in South Africa.

F.1.d. Legal Structure Supporting the Proposal: The South African Competition Act of 1989 already provides a domestic precedent for an administrative penalty system. The Competition Act provides substantial fines on companies who violate South Africa's anti-trust legislation. In 2007, the Competition Tribunal levied a fine of nearly R700 million (\$70 million) on Arcelor Mittal Steel South Africa after finding that the company had charged an excessive price for its flat steel products. By contrast, the largest criminal fine imposed in a pollution and waste case in South Africa is less than R250, 000 (\$25,000).

Benefits from the Proposal

12. (U) Benefits of such a proposed administrative/civil penalty system, some of which are South Africa specific, include the following:

- The promotion of meaningful, appropriate, transparent and consistent monetary penalties for environmental contraventions
- The dramatic reduction of current reliance on the stretched resources of the National Prosecuting Authority and the courts of the criminal justice system (and to a lesser but still significant degree, the South African Police Services);
- An increased environmental enforcement success rate by obviating the need to prove an environmental contravention beyond reasonable doubt.
- Speedier adjudication of alleged violations.
- A more effective playing field for all industry players,

particularly by way of recovering the economic benefit enjoyed by operators who choose not to incur the expense of compliance.

The Proposal Workshop and the Work of the Science Fellow

¶3. (U) The ELA Conference scheduled for May 29-30, 2009 presents a key opportunity to present the concept of an administrative and civil penalty system for environmental violations to a large group of environmental lawyers from private practice, civil society and government. A comprehensive presentation or presentations from U.S. experts on the operation of the EPA's administrative and civil penalty system would go a long way to support the feasibility of this proposal.

¶4. (U) Informal responses from key South African officials have been positive, and this workshop is the next step in getting the concept accepted into the national legal discourse, and hopefully onto the legislative reform programs for the Department of Environmental Affairs and Tourism and the Department of Water Affairs and Forestry after the national elections in April 2009.

Proposal work program

¶5. (U) May 2009 - Telephone and email consultations and preparation of presentations at the ELA Conference Workshop
May 28 - Meeting with workshop co-host Melissa Fourie,
May 29 - 30 - Presentations at the ELA Conference
The ELA Conference presents a key opportunity to present the concept of an administrative and civil penalty system for environmental violations to a large group of lawyers from private practice, civil society and government. The Participation by U.S. experts would raise the profile of the workshop and the Conference.

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Areas of scientific expertise needed

¶6. (U) A EPA attorney with extensive experience in the application of the EPA's administrative penalty system, expertise in the application of the civil penalty system applicable to environmental violations. For example, Jonathan Libber, Senior Staff Attorney in the Office of Enforcement and Compliance Assurance, who was responsible for the design of the EPA's penalty calculator, could make an excellent presentation.

PRETORIA 00000628 003.2 OF 004

Administrative Support

¶7. (U) Post will provide administrative support including, housing, transportation to and from the place of work around Pretoria and Johannesburg, access to an office space and a computer in the Embassy.

RSO Concurrence

¶8. (U) A country clearance is required for travelling U.S government officials.

Contact Information

¶9. (U) Point of contact at the Embassy in Ms. Nikki Brajevich, Environment, Science and Technology Officer, Tel: 27 12 431 4345, Fax: 27 12 342 6163, Email: BrajevichNM2@state.gov, American Embassy Pretoria, 877 Pretorius Street, Arcadia, 0083. The alternative point of contact will be FSN Martin Matlebyane, Tel: 27 12 341 4268, Fax: 27 12 342 7050, Email: Matlebyamm@state.gov.

Proposal Two: Three Dimensional Modeling of the World's Largest
Repository of the Platinum-Group Elements: the Bushveld Complex

¶10. (U) Subject of the Proposal and General Information

A) Topic: Three Dimensional Modeling of the World's Largest
Repository of the Platinum-Group Elements: the Bushveld Complex

B) Hosts: Council for Geoscience of South Africa, University of
Witwatersrand, and industry partners. Patrick Cole, Manager:
Geophysics Business Unit

C) Timeframe and Length of Fellowship: Two - three months starting
August 2009

D) Additional Skills Needed: English Language and presentation
skills

Proposal Description

¶11. (U) Background Information: The world's largest deposits of
platinum, palladium, osmium, rhodium and ruthenium (the
platinum-group elements or PGE), vast quantities of iron, tin,
chromium, titanium, and vanadium, as well as gabbro norite that is
rendered into dimension stone, are all found in the Bushveld Igneous
Complex, yet little is known about the possible subsurface depth and
extent of the Complex. PGE deposits represent a significant portion
of the exports and revenues-earning minerals critical to the South
African economy, which in turn is a primary supplier of these
strategic minerals to the U.S. Estimating the potential reserves of
PGE depends on knowledge of the three-dimensional extent and depth of
the Bushveld Complex. If the Bushveld is connected laterally, this
might open important economic opportunities within South Africa for
companies that have been unable to compete with South Africa's
established mining companies.

Proposed Work Program

¶12. (U) Scope of Work for the Fellowship and Assistance Provided by
Hosts: Gravity and magnetic modeling, constrained by geologic
mapping, drill holes and other geophysical data and physical rock
properties is the most cost effective means towards producing
three-dimensional models of the Bushveld Complex. The Council for
Geoscience of South Africa, University of Witwatersrand and industry
partners hold critical data required for modeling. Partnership with
a geophysicist from the U.S. Geological Society to provide expertise
and experience in three-dimensional gravity and magnetic modeling,
access to a wide array of computer modeling software and knowledge
of the geology of the Bushveld Complex in the context of mineral
resources assessments.

¶13. (U) The Science Fellow will work closely with the scientists at
the Council for Geoscience and the University of Witwatersrand in
the project for approximately two to three months starting in August
¶2009. The Science Fellow could be located in either Pretoria or
Johannesburg and would be expected to give talks at universities,
geophysical associations and government organizations on the project
as well as geophysical studies in general and on geologic
interpretation of regional magnetic and gravity data in particular.
The modeling results of this partnership would be used by both the

PRETORIA 00000628 004.4 OF 004

private and public sector in conducting mineral resource
assessments.

Area of Scientific Expertise Needed

¶14. (U) A scientist with the U.S. Geological Service with expertise
and experience in three-dimensional gravity and magnetic modeling,
and access to a wide array of computer modeling software. Knowledge

of the geology of the Bushveld Complex in the context of mineral resources assessments would be a plus.

Administrative Support

¶7. (U) Post will provide administrative support including housing, transportation to and from the place of work around Pretoria and Johannesburg, and access to an office space and a computer in the Embassy.

RSO Concurrence

¶8. (U) Country clearance is required for travelling U.S government officials.

Contact Information

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